

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID P. CRAIL,

Defendant.

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Case No. 2:11-CR-131

JUDGE ALGENON L. MARBLEY

REVISED SCHEDULING ORDER
SETTING DATE FOR SUPPRESSION HEARING

This matter is before the Court on the Government's Motion to Continue Trial Date. (Doc. 13.) The Government asks that the trial date in this case be continued in light of the pending Motion to Suppress, (Doc. 9), filed by Defendant David P. Crail. Both parties agree that the Motion to Suppress will resolve the case short of trial.

Under the Supreme Court's precedent in *Barker v. Wingo*, 407 U.S. 514, 530 (1972), this Court must consider a four-part balancing test which assesses the "length of the delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant" to determine whether a post-indictment delay violates the Speedy Trial Clause. The length of the delay here is justified in light of the reason for the delay, which is to allow the parties to have a hearing on the pending Motion to Suppress. Moreover, the Defendant's rights under the Speedy Trial Act were tolled upon filing of the Motion to Suppress. 18 U.S.C. § 3161(h)(1)(D). The Defendant asserts his Fourth Amendment rights in the Motion to Suppress, and, therefore, providing the parties with the opportunity to have a hearing on that motion, results in little to no prejudice to the Defendant. The *Barker* balancing test weighs in favor of continuing the trial.

The Government's Motion to Continue is **GRANTED** in light of the pending Motion to Suppress. The suppression hearing is set for **Thursday, July 12, 2012 at 9:00 a.m.** The dates in this Court's Revised Scheduling Order, (Doc. 11), are no longer applicable. This Court will set a new trial date after the hearing on the Motion to Suppress if necessary.

IT IS SO ORDERED.

s/Algenon L. Marbley
ALGENON L. MARBLEY
United States District Court Judge

DATED: June, 13, 2012